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IN THE SUPREME COURT OF THE STATE OF IDAHO

PETER FRANKLIN GOULLETTE,)	
)	NO. 47576-2019
Petitioner-Appellant,)	
v.)	BONNER COUNTY
)	NO. CV09-19-934
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BONNER**

HONORABLE BARBARA A. BUCHANAN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Peter Goulette appeals from the judgment dismissing his petition for post-conviction relief, arguing the district court erred in summarily dismissing his claim that he received ineffective assistance of counsel based on his trial counsel's failure to file a direct appeal upon request. (*See* Appellant's Br., pp.4-6.) Ignoring all of this Court's recent decisions on preservation, the State argues in its Respondent's Brief that this Court should affirm for a reason neither argued to, or decided by, the district court, under a "right result, wrong theory" approach. (Respondent's Br., p.11.) Mr. Goulette submits this Reply Brief to respond to the State's argument, pointing this Court specifically to *State v. Hoskins*, 165 Idaho 217 (2019).

Statement of Facts and Course of Proceedings

Mr. Goulette included a statement of facts and course of proceedings in his Appellant's Brief, which he relies on and incorporates herein.

ISSUE

Did the district court err in summarily dismissing Mr. Goulette's petition for post-conviction relief?

ARGUMENT

The District Court Erred In Summarily Dismissing Mr. Goulette’s Petition For Post-Conviction Relief

A. Introduction

The State argues in its Respondent’s Brief that the district court did not err in summarily dismissing Mr. Goulette’s post-conviction petition because Mr. Goulette alleged only that he asked his attorney to file an appeal “after sentencing,” but did not specifically allege he made the request within 42 days of sentencing. (Respondent’s Br., pp.7-8.) The State acknowledges, as it must, that it never made this argument in the district court, and that this was not the basis for the district court’s decision. (*See id.*) The State contends, however, that this Court can affirm under a “right result, wrong theory” approach. (*Id.*, p.11.) The State is clearly wrong under *State v. Hoskins*, 165 Idaho 217 (2019). This Court must vacate the judgment dismissing Mr. Goulette’s petition, and remand this case to the district court.

B. This Court Cannot Affirm Under A “Right Result, Wrong Theory” Approach

In *State v. Hoskins*, the Idaho Supreme Court reviewed the history of the “right result, wrong theory” rule, and squarely rejected the State’s proposal that the rule “can be invoked in situations where the alternative basis was not pressed before the trial court.” 165 Idaho at 223. Thus, in *Hoskins*, the Court did not permit the State to argue a new exception to the warrant requirement on appeal, noting, among other things, that “the record suggests that the proceedings developed in such a way that [the defendant] had neither the incentive nor the opportunity to present evidence or argument concerning [the new theory advanced by the State on appeal].” *Id.* at 226. The Court noted it “has placed a premium on counsel presenting the facts and law that it chooses to support its position in the trial court.” *Id.* (citation omitted).

Just as in *Hoskins*, this Court cannot affirm under a “right result, wrong theory” approach because the State is arguing a basis on appeal which it did not press in the district court. In the district court, the State moved to summarily dismiss Mr. Goulette’s petition because (1) “[the] petitioner never sought appellate review of the matters set forth in his Petition,” and thus “forfeited his opportunity to seek post-conviction relief,” and (2) “[the] Petition fails to allege sufficient grounds to determine ineffective assistance [of] counsel by trial counsel.” (R., pp.46-47.) The prosecutor did not provide any additional argument in support of its second argument. (See R., p.50.) Importantly, the prosecutor never argued, in writing or at the hearing on his motion, that Mr. Goulette did not sufficiently allege, as a factual matter, that he made a timely request of his trial counsel to file an appeal. (See Tr., pp.1-15.)

Not surprisingly, the district court did not address the timing of Mr. Goulette’s request to his trial counsel in its factual findings. (See R., pp.55-56.) Instead, the district court granted the State’s motion for summary dismissal because it concluded trial counsel’s failure to file a direct appeal “can be considered strategic and tactical, and thus, will not be second guessed or serve as a basis for post-conviction relief,” and because Mr. Goulette did not raise a triable issue as to whether he would have insisted on going to trial absent counsel’s error. (R., pp.60-61.)

The State recognizes “the district court’s reasoning with respect to both *Strickland* prongs was flawed.” (Respondent’s Br., p.10.) The State nonetheless asks this Court to affirm because Mr. Goulette did not specifically allege that he asked his trial counsel to file an appeal within 42 days of the entry of the judgment of conviction. Like in *Hoskins*, it would not be fair for this Court to affirm under the State’s new argument because Mr. Goulette was not on notice that the State was challenging the sufficiency of his factual allegations. See *Hoskins*, 165 Idaho at 226. Mr. Goulette could have addressed the timing at the hearing on the State’s motion, had he

known it would be an issue. Moreover, to the extent there is a dispute of fact regarding the timing of Mr. Goulette's request to his trial counsel, that dispute makes summary disposition inappropriate. *See, e.g., Johnson v. State*, 162 Idaho 213, 217 (2017) (stating summary disposition is appropriate only if there are no genuine issues of material fact, and further stating that in reviewing the summary dismissal of a post-conviction petition, the appellate court will determine whether a genuine issue of fact exists, construing the facts and all reasonable inferences in favor of the non-moving party).

The State correctly states in its Respondent's Brief that where trial counsel disregards a direct request to file an appeal, the defendant is not required to identify the meritorious issues that would have been raised, but instead should be restored to the status he enjoyed immediately following the judgment of conviction, when he was entitled to the direct appeal. (Respondent's Br., p.7.) The State recognizes that Mr. Goulette asserted in his post-conviction petition that he asked his attorney to file an appeal "after sentencing." (Respondent's Br., p.7.) The district court erred in dismissing Mr. Goulette's claim of ineffective assistance of counsel based on his trial counsel's failure to file an appeal, and this Court should not affirm the summary dismissal of Mr. Goulette's petition under a "right result, wrong theory" approach.

CONCLUSION

For the reasons stated above, as well as those set forth in his Appellant's Brief, this Court should vacate the judgment dismissing Mr. Goulette's petition for post-conviction relief, and remand this case to the district court for further proceedings.

DATED this 18th day of November, 2020.

/s/ Andrea W. Reynolds
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of November, 2020, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

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/s/ Evan A. Smith
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Administrative Assistant

AWR/eas